

### Remarks

In response to the Office Action dated May 05, 2008, Applicant respectfully requests reconsideration based on the above claim amendment and the following remarks. Applicant respectfully submits that the claims as presented are in condition for allowance. Claims 1-2, 5, 8-9, 11-12, 17-20 and 24-26 have been amended. Claims 3-4 and 27-28 have been cancelled without prejudice or disclaimer. Claim 29 is new. No new matter has been added. Support for new claim 29 may be found in at least paragraph [0023]. This response is being submitted along with a request for continued examination.

### Interview Summary

A brief telephone interview was conducted between the undersigned and Examiner Sheleheda on June 20, 2008. During the interview it was agreed that neither reference described that the telephony signal and a packetized data signal must cross the right-of-way to reach the multiplexer. It was further agreed that the neither reference describes that the first, second and third signals all originate from the same service provider. The Examiner further asserted that the re-multiplexer 72 of a Tomich set top box 24 may be moved from the set top box into the optical splitter of Faber so that multiple and redundant video signals would not be created. No agreement was reached.

### 103 Rejections

Claims 1-6, 8, 10-12, 17-21 and 24-28 stand rejected under 35 USC §103(a) as being unpatentable over Tomich (US Pat. 5,983,068) in view of Faber (U.S. Pat. 6,486,907). As noted above, claims 3-4 and 27-28 are canceled without prejudice or disclaimer, rendering this rejection moot with regards to those claims. Claims 7, 9, 13-16 and 22-23 stand rejected under 35 USC §103(a) as being unpatentable over Tomich in view of Faber and further in view of the alleged admitted prior art (“APA”). Applicant respectfully traverses the rejections.

#### Claims 1-2, 5-6, 8, 10 and 26

Amended independent claim 1 recites, in pertinent part:

“[a] system for delivering to a plurality of subscribers located on a second side of

a right-of-way a video signal that is free from a right-of-way franchise fee...the central office transmits a telephony signal and a packetized data signal to the multiplexer...such that the telephony signal and a packetized data signal must cross the right-of-way to reach the multiplexer...the wireless receiver receiving the video signal and transmitting the video signal to the multiplexer, the multiplexer combining the video signal, the telephony signal and the packetized data...”

The Office Action rejects independent claim 1 by asserting that the combination of Tomich and Farber describes each and every claim element. However, without conceding that the rejections are correct, base claim 1 has been amended to recite claim elements not described by the combination of Tomich and Farber.

For example, amended independent claim 1 recites “...the central office transmits a telephony signal and a packetized data signal to the multiplexer...such that the telephony signal and a packetized data signal must cross the right-of-way to reach the multiplexer...the wireless receiver receiving the video signal and transmitting the video signal to the multiplexer, the multiplexer combining the video signal, the telephony signal and the packetized data...”.

Applicant respectfully notes that Tomich is concerned with communicating video, telephony and data to multiple subscribers. Tomich describes wirelessly receiving various types of video programming (See, Fig. 6, 102 (Direct Broadcast Ka band TV) and 104 (S&C band TV); Col. 4, l. 9-23; Col. 8, l. 33-44). Tomich also describes receiving data transmissions from various telephony, backhaul or direct space network sources (See, Fig. 6, 106; Col. 4, l. 21-23; Col. 8, l. 33-44). Tomich goes on to describe the delivery of conventional wireline telephone (See, Fig. 6, 110) and cable TV services (See, Fig. 6, 108; Col. 8, l. 33-42; Col. 9, l. 39).

However, considering Tomich as a whole (MPEP2143.01), Tomich fails to describe that “...the central office transmits a telephony signal and a packetized data signal to the multiplexer...such that the telephony signal and a packetized data signal must cross the right-of-way to reach the multiplexer...”. Tomich only describes that a cable TV signal and wireline telephone (i.e. voice) services are transmitted “...such that the telephony signal and a packetized data signal must cross the right-of-way to reach the multiplexer...” Tomich does not describe that packetized data must cross the right-of-way to reach the multiplexer and in fact implies, if not describes, such data being

received wirelessly (Fig. 6, 106, Col. 4, l. 20-24).

Applicant respectfully asserts that Farber fails to cure the above deficiencies in Tomich. Farber is merely concerned with the delivery of video programming to subscribers via cable and wireless transmission. Farber is silent concerning the delivery of packetized data or telephony signals. Therefore, Farber also fails to describe that “...the central office transmits a telephony signal and a packetized data signal to the multiplexer...such that the telephony signal and a packetized data signal must cross the right-of-way to reach the multiplexer...”

Because none of Tomich, Farber or their combination describes each and every claim element of amended independent claim 1, a prima facie case of obviousness cannot be established. As such, amended independent claim 1 is allowable over the combination of Tomich and Farber for at least this reason. Independent claim 26 recites similar subject matter and is allowable for at least the same reasons. Claims 2, 5-6, 8 and 10 depend from an allowable independent claim 1 and are also allowable for at least the same reasons.

#### Claims 1-2 and 5-26

Applicant respectfully asserts that there is no motivation to modify Tomich in view of Farber because such a modification would require a change in the operating principal of Tomich. (MPEP 2143.01). Tomich describes a fiber optic trunk circuit 200 where each subscriber occupies a position on the trunk circuit 200 and each receives a multiplexed signal 58 in succession. The multiplexed signal combines video, voice and packetized data. (See Fig. 1).

When, multiplexed signal reaches a subscriber, the subscriber set top box 24 de-multiplexes 70 the signal, removes the subscriber's data and voice signals from the stream and splits out the video signal. The split video signal is used for both subscriber viewing on one hand and also for re-multiplexing with the data signals and voice signals returning from the user and retransmission to the next user on the other.

Applicant respectfully points out that the data and voice signals are user coded so that the subscriber micro controller 74 **(which is unavoidably specific to the subscriber)** can process out the data and voice signals intended for that particular

subscriber. (Col. 6, l. 11-25). Necessarily, the entire stream of voice and data signals must pass through the subscriber's unique microprocessor in order for the Tomich system to function properly for any given subscriber. Only by having all of the voice and data signals passing through each subscriber's micro-processor may those signals intended for a particular subscriber be identified and utilized by that subscriber.

The video signal, the old data and voice signals and any new data and new voice signals from the subscriber are sent to a re-multiplexer. The re-multiplexer synchronizes the video signal, the new packetized and voice signals from the subscriber along with the existing old data and voice signals and sends the newly re-combined signal to the next subscriber in the circuit. It is critical to the operation of Tomich, that the signal must be received and processed serially by each subscriber. Contrarily, Farber describes that the demodulated video signal (and allegedly any packetized data and voice signals which are not described in Farber) are split and then sent to multiple set top boxes in parallel.

The Office Action asserts that by placing a Farber satellite receiver and distribution unit 16 in line with the incoming signal 200 of Tomich, the satellite receiver and distribution unit 16 would act as the recited optical network unit being directly coupled to a plurality of users. However, Applicant respectfully submits that splitting the signal at the satellite receive and distribution units (16/46 of Farber) to multiple subscribers in a parallel fashion would distort the voice and data signals being sent to the next subsequent subscriber in the fiber optic trunk circuit 200.

In the physical world, there is always a time delay for a signal to travel and be processed. Therefore, there certainly would be a timing differential in the multiple packetized data and voice signals passing through and returning from each of the plurality of subscribers' micro processors 74. The mere difference in electrical distances between the unique subscriber micro processors 74 relative to each other would be enough to produce multiple redundant data and video signals with significant timing differentials.

Requiring signal travel and processing to be physically done in series (i.e. one subscriber at a time as in Tomich) removes any danger of introducing redundant voice and data signals into the re-multiplexed signal being forwarded to the next subscriber. Therefore, merely modifying Tomich in view of Farber as asserted by the Office Action

would not reasonably be expected to be successful without further modifying Tomich. The operating principles of Tomich would somehow have to be modified even further to address the problems of multiple redundant return signals introduced by Farber.

Because modifying Tomich in view of Farber would not reasonably result in success, there is no motivation to modify Tomich by Farber. Therefore, a prima facie case of obviousness cannot be established. As such, claims 1-2 and 5-26 are allowable over the combination of Tomich and Farber for at least this additional and independent reason.

#### Claims 7, 9, 13-16 and 22-23

Claims 7, 9, 13-16 and 22-23 stand rejected under 35 USC §103(a) as being unpatentable over Tomich in view of Faber and further in view of the alleged admitted prior art (“APA”). Claims 7-9, 13-16 and 22-23 depend from an allowable independent claim 1, 11 or 20 and are allowable for at least the same reasons as discussed above.

#### Claim 29

Claim 29 recites “[t]he method of claim 20 wherein the first signal, the second signal and the third signal each originate from the same service provider”. Applicant respectfully asserts that none of Tomich, Faber or their combination describes that the first signal, the second signal and the third signal each originate from the same service provider. As such, claim 29 is allowable over the combination of Tomich and Farber for at least this additional and independent reason.

#### Conclusion

Applicant asserts that the application including claims 1-2, 5-26 and 29 is now in condition for allowance. Applicant requests reconsideration in view of the amendments and remarks above and further request that a Notice of Allowability be provided. Should the Examiner have any questions, please contact the undersigned.

No fees are believed due other than for the RCE. However, please charge any additional fees or credit any overpayment to Deposit Account No. 50-3025.

Respectfully submitted,

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